

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

MISC. CIVIL APPLN.(CONTEMPT PETITION) No 417 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE S.M.SONI and
MR.JUSTICE R.R.JAIN

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

ABDULKAYUBKHAN SARFARAJKHAN

Versus

GULAM MAIYUDDIN ALLARAKHA

Appearance:

1. Misc. Civil Appln.(Contempt Petition) No. 417 of 1987
MR JJ SHAH for Petitioners (absent)
MR KV SHELAT for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE S.M.SONI and
MR.JUSTICE R.R.JAIN

Date of decision: 12/09/96

ORAL JUDGEMENT (Per Soni J.)

Respondent no.2, who was required to hand over possession to the petitioners, has died. Respondent no.2 was a sub-tenant of respondent no.1.

Respondent no.2 was in possession and respondent no.1 had also agreed under the consent terms to hand over possession being in constructive possession of the premises. As respondent no.2 has died, this petition for taking action against him under the Contempt of Courts Act is not maintainable as it abates.

It reads out from the affidavit-in-reply that possession of some portion of the premises has already been handed over and there now remains a dispute whether there is a total compliance of the consent terms or not. Again, this remains to be a disputed question of fact and in particular the identity of the premises to be handed over. However, when respondent no.2, who had to hand over possession of the premises, has died, the contempt proceedings cannot be prosecuted further.

On last two occasions, Mr.B.N.Raval sought adjournments stating that he will keep Senior counsel Mr.J.J.Shah, who is also on record, present before this to consider whether they should withdraw this application to move the trial court by way of execution and/or by calling the heirs of respondent no.2 to comply with the consent terms. Despite our granting time, Mr.J.J. Shah had not remained present. On the last occasion when the matter was called out, Mr.Raval again sought time for today with a statement that he will keep Mr.J.J.Shah present before the court. Today, Mr.B.N.Raval has filed a leave note. Mr.J.J.Shah is an Advocate on record. There is neither sick note nor leave note of Mr.J.J.Shah and he is not present before the court.

In view of this fact, the petition is dismissed. Rule discharged. No costs.
